

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

KEVIN BIGGERS,

Plaintiff,

vs.

Civil Action 2:05-CV-1156
Judge Sargus
Magistrate Judge King

JUDGE MIKE LOWE, et al.,

Defendants.

ORDER

On December 27, 2005, the United States Magistrate Judge issued a *Report and Recommendation* pursuant to 28 U.S.C. §§1915(e), 1915A, in which she recommended that the claims against the defendant state court judges and prosecutor be dismissed, that all claims that would imply the invalidity of plaintiff's criminal conviction be dismissed and that plaintiff file an amended complaint "in which he specifies the person or persons responsible for the claimed excessive force and alleged denial of medical care." *Report and Recommendation*, at 2, Doc. No. 4. This matter is now before the Court on plaintiff's objection to the *Report and Recommendation*, which the Court will consider de novo. 28 U.S.C. §636(b).

Plaintiff appears to object only to that portion of the *Report and Recommendation* that recognizes that state court judges and prosecutors are absolutely immune from liability for monetary damages for actions taken in their judicial and prosecutorial roles. See *Pierson v. Ray*, 386 U.S. 547 (1967); *Imbler v. Pachtmen*, 424 U.S. 409 (1976). Plaintiff specifically asserts that these defendants acted in conspiracy with other law enforcement officials. *Objections to Report and Recommendation*. However, the specific allegations against these


defendants still relate to and arise out of their judicial or prosecutorial functions, and these defendants are entitled to immunity from liability for monetary damages. See *Ashelman v. Pope*, 793 F.2d 1092 (9th Cir. 1986). Accordingly, plaintiff's objection to the Report and Recommendation is **DENIED**.

The Report and Recommendation is **ADOPTED** and **AFFIRMED**. Defendants Lowe, Favrué and Howdyshell are **DISMISSED** and all claims other than the claims of excessive force and denial of medical care are likewise **DISMISSED**.

Plaintiff has filed an amended complaint in which he continues to assert claims that would imply the invalidity of his current criminal conviction. All such claims are **DISMISSED**. Only the claims of excessive force and denial of medical care may proceed.

The United States Marshal Service is **DIRECTED** to effect service of process¹ on the remaining defendants, who shall have forty-five (45) days after service to respond to the amended complaint.

2-16-2006
Date



Edmund A. Sargus, Jr.
United States District Judge

¹The United States Marshal Service shall serve, by certified mail, a copy of the amended complaint, this Order and a summons on each of the defendants remaining in the case.